



DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-124, C-570-125]

Certain Vertical Shaft Engines Between 99cc and Up To 225cc, and Parts Thereof, from the People's Republic of China: Initiation of Circumvention Inquiry of the Antidumping and Countervailing Duty Orders – Dual-Piston Engines

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: In response to a circumvention inquiry request from Briggs & Stratton, LLC, the Department of Commerce (Commerce) is initiating a country-wide circumvention inquiry to determine whether dual-piston engines exported from the People's Republic of China (China) will circumvent the antidumping (AD) and countervailing duty (CVD) orders on certain vertical shaft engines between 99cc and up to 225cc, and parts thereof (small vertical engines) from China.

DATES: Applicable [Insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: Paul Gill, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-5673.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2022, Briggs & Stratton, LLC, the petitioner in the less-than-fair-value (LTFV) and CVD investigations, requested that Commerce initiate a circumvention inquiry with respect to dual-piston engines produced in and exported from China.¹ The petitioner alleges that dual-piston engines constitute merchandise altered in form or appearance in such minor respects

¹ See Petitioner's Letter, "Request for Anti-Circumvention Inquiry Pursuant to Section 781(c) and/or Section 781(d) of the Tariff Act of 1930," dated March 4, 2022.

that they should be included within the scope of the *Orders*,² pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226(j). In addition, the petitioner alleges that dual-piston engines are later-developed merchandise and should be included within the scope of the *Orders*, pursuant to section 781(d) of the Act and 19 CFR 351.226(k).

On March 28, 2022, we extended the deadline to initiate this circumvention inquiry by 15 days, in accordance with the 19 CFR 351.226(d)(1), to April 18, 2022.³ On April 7, 2022, FNA Group, Inc. (FNA) submitted comments asking that Commerce reject the petitioner's request that Commerce initiate a country-wide circumvention inquiry.⁴

Scope of the *Orders*

The products subject to the *Orders* are small vertical engines from China. For a complete description of the scope of the *Orders*, see the appendix to this notice.

Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers dual-piston engines produced in China and exported to the United States.

Statutory and Regulatory Framework

Section 351.226(d) of Commerce's regulations states that if Commerce determines that a request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c), then Commerce "will accept the request and initiate a circumvention inquiry." Section 351.226(c)(1) of Commerce's regulations, in turn, requires that each request for a circumvention inquiry allege "that the elements necessary for a circumvention determination under section 781 of the Act exist" and be "accompanied by information reasonably available to the interested party

² See *Certain Vertical Shaft Engines Between 99cc and Up to 225cc, and Parts Thereof from the People's Republic of China: Antidumping and Countervailing Duty Orders*, 86 FR 23675 (May 4, 2021) (*Orders*).

³ See Memorandum, "Correction to Extended Date to Determine Whether to Initiate Circumvention Inquiry," dated April 7, 2022. Commerce initially submitted a memorandum on March 28, 2022 to extend the initiation deadline, but the extended deadline was incorrectly listed as April 19, 2022. See Memorandum, "Extension of Time to Determine Whether to Initiate Circumvention Inquiry," dated March 28, 2022.

⁴ See FNA's Letter, "Request to Reject Anti-Circumvention Inquiry Request," dated April 7, 2022. FNA initially submitted comments on March 29, 2022, but Commerce rejected these comments because they contained untimely new factual information. See Commerce's Letter, "Rejection Letter," dated April 6, 2022. We intend to address FNA's comments from its April 7, 2022 letter post-initiation because they relate to the substance of the petitioner's allegation.

supporting these allegations.” The petitioner alleges circumvention pursuant to sections 781(c) (merchandise altered in form or appearance in minor respects) and 781(d) (merchandise developed after an investigation is initiated) of the Act.

Section 351.226(m)(2) of Commerce’s regulations states, for companion AD and CVD duty proceedings, that “the Secretary will initiate and conduct a single inquiry with respect to the product at issue for both orders only on the record of the antidumping proceeding.” Further, once “the Secretary issues a final circumvention determination on the record of the antidumping duty proceeding, the Secretary will include a copy of that determination on the record of the countervailing duty proceeding.” Accordingly, once Commerce concludes this circumvention inquiry, Commerce intends to place its final circumvention determination on the record of the companion CVD proceeding.

Section 781(c)(1) of the Act provides that the class or kind of merchandise subject to an AD or CVD order shall include articles that have been “altered in form or appearance in minor respects ... whether or not included in the same tariff classification.” Section 781(c)(2) of the Act provides an exception that section 781(c)(1) of the Act “shall not apply with respect to altered merchandise if the administering authority determines that it would be unnecessary to consider the altered merchandise within the scope of the {order}.” Concerning the allegation of minor alteration under section 781(c) of the Act and 19 CFR 351.226(j), Commerce may consider criteria including, but not limited to: (1) overall physical characteristics of the merchandise; (2) expectations of ultimate users; (3) use of the merchandise; (4) channels of marketing; and (5) cost of any modification relative to the value of the imported products.

Section 781(d) of the Act provides that Commerce may find circumvention of an AD or CVD order when merchandise is developed after an investigation is initiated. In conducting a later-developed merchandise inquiry under section 781(d)(1) of the Act and 19 CFR 351.226(k), Commerce will consider whether: (1) the later-developed merchandise has the same general physical characteristics as the merchandise with respect to which the order was originally issued;

(2) the expectations of the ultimate purchasers of the later-developed merchandise are the same as for the earlier product; (3) the ultimate use of the earlier product and the later-developed merchandise are the same; (4) the later-developed merchandise is sold through the same channels of trade as the earlier product; and (5) the later-developed merchandise is advertised and displayed in a manner similar to the earlier product.⁵ First, however, Commerce determines whether the merchandise subject to the inquiry was commercially available at the time of the initiation of the underlying LTFV or CVD investigation (*i.e.*, the product was present in the commercial market or the product was tested and ready for commercial production).⁶

Analysis

After analyzing the record evidence and the petitioner's allegation, we determine that there is sufficient information to warrant initiation of a circumvention inquiry based on both allegations: (1) minor alterations, pursuant to section 781(c) of the Act and 19 CFR 351.226(j); and (2) later-developed merchandise, pursuant to section 781(d) of the Act and 19 CFR 351.226(k). For a full discussion of the basis for our decision to initiate a circumvention inquiry regarding both the later-developed merchandise and minor alterations allegations, *see* the Initiation Decision Memorandum.⁷

As explained in the Initiation Decision Memorandum, the information provided by the petitioner also warrants initiating this circumvention inquiry on a country-wide basis. Commerce has taken this approach in prior circumvention inquiries, when the facts warranted initiation on a country-wide basis.⁸

⁵ See section 781(d)(1) of the Act.

⁶ See 19 CFR 351.226(k).

⁷ See Memorandum, "Decision Memorandum for Initiation of Circumvention Inquiry," dated concurrently with, and hereby adopted by, this notice (Initiation Decision Memorandum), available at <https://access.trade.gov/public/FRNoticesListLayout.aspx>.

⁸ See, e.g., *Aluminum Extrusions from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping and Countervailing Duty Orders and Rescission of Minor Alterations Anti-Circumvention Inquiry*, 82 FR 4630 (July 26, 2017), and accompanying Issues and Decision Memorandum at Comment 4.

Commerce intends to establish a schedule for questionnaires and comments on the issues related to this inquiry. A company's failure to respond completely to Commerce's requests for information may result in the application of partial or total facts available, pursuant to section 776(a) of the Act, which may include adverse inferences, pursuant to section 776(b) of the Act.

Suspension of Liquidation

Pursuant to 19 CFR 351.226(l)(1), Commerce intends to notify U.S. Customs and Border Protection (CBP) of this initiation and direct CBP to continue the suspension of liquidation of entries of products subject to this circumvention inquiry that were already subject to the suspension of liquidation under the *Orders* and to apply the cash deposit rates that would be applicable if the products were determined to be covered by the scope of the *Orders*. Should Commerce issue preliminary or final circumvention determinations, Commerce will follow the suspension of liquidation rules under 19 CFR 351.226(l)(2)-(4).

Notification to Interested Parties

In accordance with 19 CFR 351.226(d) and sections 781(c) and (d) of the Act, Commerce determines that the petitioner's request for a circumvention inquiry satisfies the requirements of 19 CFR 351.226(c). Accordingly, Commerce is notifying all interested parties of the initiation of this circumvention inquiry to determine whether dual-piston engines produced in and exported from China will circumvent the *Orders*. In addition, we have included a description of the products that are the subject to this inquiry and an explanation of Commerce's decision to initiate this inquiry as provided in the accompanying Initiation Decision Memorandum. In accordance with 19 CFR 351.226(e)(1), Commerce intends to issue its preliminary circumvention determination no later than 150 days from the date of publication of the notice of initiation of this circumvention inquiry in the *Federal Register*.

This notice is published in accordance with sections 781(c) and (d) of the Act, and 19

CFR 351.226(d)(1)(ii).

Dated: April 18, 2022.

Lisa W. Wang,
Assistant Secretary
for Enforcement and Compliance.

Appendix

Scope of the *Orders*

The merchandise covered by these *Orders* consists of spark-ignited, non-road, vertical shaft engines, whether finished or unfinished, whether assembled or unassembled, whether mounted or unmounted, primarily for walk-behind lawn mowers. Engines meeting this physical description may also be for other non-hand-held outdoor power equipment, including but not limited to, pressure washers. The subject engines are spark ignition, single-cylinder, air cooled, internal combustion engines with vertical power take off shafts with a minimum displacement of 99 cubic centimeters (cc) and a maximum displacement of up to, but not including, 225cc. Typically, engines with displacements of this size generate gross power of between 1.95 kilowatts (kw) to 4.75 kw.

Engines covered by these *Orders* normally must comply with and be certified under Environmental Protection Agency (EPA) air pollution controls title 40, chapter I, subchapter U, part 1054 of the Code of Federal Regulations standards for small non-road spark-ignition engines and equipment. Engines that otherwise meet the physical description of the scope but are not certified under 40 CFR part 1054 and are not certified under other parts of subchapter U of the EPA air pollution controls are not excluded from the scope of the orders. Engines that may be certified under both 40 CFR part 1054 as well as other parts of subchapter U remain subject to the scope of the orders.

Certain small vertical shaft engines, whether or not mounted on non-hand-held outdoor power equipment, including but not limited to walk-behind lawn mowers and pressure washers, are included in the scope. However, if a subject engine is imported mounted on such equipment, only the engine is covered by the scope. Subject merchandise includes certain small vertical shaft engines produced in the subject country whether mounted on outdoor power equipment in the subject country or in a third country. Subject engines are covered whether or not they are accompanied by other parts.

For purposes of these *Orders*, an unfinished engine covers at a minimum a sub-assembly comprised of, but not limited to, the following components: crankcase, crankshaft, camshaft, piston(s), and connecting rod(s). Importation of these components together, whether assembled or unassembled, and whether or not accompanied by additional components such as a sump, carburetor spacer, cylinder head(s), valve train, or valve cover(s), constitutes an unfinished engine for purposes of these orders. The inclusion of other products such as spark plugs fitted into the cylinder head or electrical devices (e.g., ignition coils) for synchronizing with the engine to supply tension current does not remove the product from the scope. The inclusion of any other components not identified as comprising the unfinished engine subassembly in a third country does not remove the engine from the scope.

Specifically excluded from the scope of these orders are “Commercial” or “Heavy Commercial” engines under 40 C.F.R. §§ 1054.107 and 1054.135 that have (1) a displacement of 160 cc or greater, (2) a cast iron cylinder liner, (3) an automatic compression release, and (4) a muffler with at least three chambers and volume greater than 400 cc.

The engines subject to these *Orders* are predominantly classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 8407.90.1010. The engine subassemblies that are subject to these *Orders* are classified under HTSUS subheading 8409.91.9990. The mounted engines that are subject to these *Orders* are classified under HTSUS subheadings

8433.11.0050, 8433.11.0060, and 8424.30.9000. Engines subject to these *Orders* may also be classified under HTSUS subheadings 8407.90.1020, 8407.90.9040, and 8407.90.9060. The HTSUS subheadings are provided for convenience and customs purposes only, and the written description of the merchandise is dispositive.

[FR Doc. 2022-08698 Filed: 4/22/2022 8:45 am; Publication Date: 4/25/2022]